

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

True Homes, LLC,)
)
Plaintiff,)
)
v.) **Case No. 3:18cv345-KDB-DCK**
)
CMH Manufacturing, Inc. and)
CMH Homes, Inc.,)
)
Defendants.)

ORDER ON OBJECTIONS TO DEPOSITION DESIGNATIONS

This matter is before the Court on the Parties' Objections to Deposition Designations, Doc. No. 192. At the request of the Court at the pretrial conference on March 22, 2021, the Parties have provided the Court with a revised summary of their objections that is limited to those depositions that the Parties foresee may be introduced into evidence and those objections they continue to assert. The Court rules on those objections as follows:

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Connerley, Robert	Plaintiff - Counter Designation	14:21 - 15:16	15:10-16 - FRE 401 Not Relevant	Overruled
Connerley, Robert	Plaintiff - Counter Designation	24:12 - 25:16	FRE 611 - Repetitive of 25:17-23	Overruled
Connerley, Robert	Plaintiff - Counter Designation	27:6 - 27:19	FRE 401/402 - Not Relevant	Overruled
Connerley, Robert	Plaintiff - Counter Designation	27:25 - 28:4	FRE 401/402 - Not Relevant	Overruled
Connerley, Robert	Plaintiff - Counter Designation	28:21 - 28:23	FRE 401/402 - Not Relevant	Overruled

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Connerley, Robert	Plaintiff - Counter Designation	32:17 - 33:3	FRE 401/402 - Not Relevant	Overruled
Connerley, Robert	Plaintiff - Counter Designation	35:5 - 36:4	35:13-36:4 - FRE 611 Cumulative/Repetitive	Overruled
Connerley, Robert	Plaintiff - Counter Designation	36:15 - 36:21	FRE 611 Cumulative/Repetitive	Overruled
Connerley, Robert	Plaintiff - Counter Designation	41:13 - 42:12	FRE 401/402 - Not Relevant	Sustained as to 41:13-42:1 until the damages phase of the trial; otherwise overruled
Duncan, Michael	Defendants Counter Designation	164:11-164:14	FRE 801. Hearsay	Sustained. The witness may testify to his own experience (line 11) but not what "retailers" have told him.
Duncan, Michael	Defendants Counter Designation	56:1-56:9	FRE 801. Hearsay	Overruled
Duncan, Michael	Defendants Counter Designation	57:22-58:3	FRE 801. Hearsay	Sustained. Testimony should not be read beginning at line 19.
Duncan, Michael	Defendants Counter Designation	66:21-66:25	FRE 801. Hearsay	Sustained. Testimony should not be read beginning at line 19.
Duncan, Michael	Defendants Counter Designation	165:24-166:3	FRE 801. Hearsay	Sustained. Double Hearsay (testimony re what retailers say that customers said).
Duncan, Michael	Plaintiff-Designation	124:12 - 124:17	FRE 602: Improper hypothetical. Calls for speculation and assumes facts not in witness' personal knowledge.	Overruled
Duncan, Michael	Plaintiff-Designation	124:22 - 125:8	FRE 602: Improper hypothetical. Calls for speculation and assumes facts not in witness' personal knowledge.	Overruled

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holdbrooks, Keith	Plaintiff-Designation	32:13 - 32:16	FRE408: Privileged Settlement Negotiations. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this subject matter might be excluded.	Sustained. This testimony contains no specific reference to the Parties Settlement Agreement but does reference the lawsuit as the reason for the change in the mark. The answer "Yeah" should still be read.
Holdbrooks, Keith	Plaintiff-Designation	33:13 - 33:17	FRE408: Privileged Settlement Negotiations. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this subject matter might be excluded.	Sustained.
Holdbrooks, Keith	Plaintiff-Designation	46:14 - 47:14	FRE401: 47:1-3: Improper. Irrelevant. Incorporate lawyer objections which are not proper evidence.	Overruled (the lawyer's objection clarifies the testimony)
Holdbrooks, Keith	Plaintiff-Designation	54:9 - 54:9	FRE402: Improper. Irrelevant. Designates lawyer commentary. Not proper evidence.	Overruled
Holdbrooks, Keith	Plaintiff-Designation	59:15 - 59:20	FRE401. 59:19: Improper. Irrelevant. Includes lawyer commentary. Not proper evidence.	Overruled (the lawyer's objection clarifies the testimony)
Holdbrooks, Keith	Plaintiff-Designation	66:1 - 66:6	FRE401: Irrelevant. Prefabulous was the subject of an advertisement campaign for Clayton.com and did not relate to TRU or the facts of this case.	Sustained. 65:15-22 also should not be read. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	66:10 - 66:11	FRE401: Irrelevant. Prefabulous was the subject of an advertisement campaign for Clayton.com and did not relate to TRU or the facts of this case.	Sustained. 65:15-22 also should not be read. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holdbrooks, Keith	Plaintiff-Designation	66:14 - 66:15	FRE401: Irrelevant. Prefabulous was the subject of an advertisement campaign for Clayton.com and did not relate to TRU or the facts of this case.	Sustained. 65:15-22 also should not be read. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	73:22 - 74:4	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	74:10 - 74:12	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	74:16 - 75:3	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	75:12 - 75:18	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	75:23 - 75:25	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	76:2 - 76:12	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	76:14 - 77:7	FRE401: Irrelevant: Clayton Series does not relate to TRU or the facts of this case.	Overruled. Testimony states TRU Homes is part of the Clayton Series (74:19).
Holdbrooks, Keith	Plaintiff-Designation	78:23 - 79:6	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holdbrooks, Keith	Plaintiff-Designation	80:1 - 80:13	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	80:20 - 80:22	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	80:24 - 80:25	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	83:7 - 83:19	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	83:23 - 83:25	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holdbrooks, Keith	Plaintiff-Designation	84:2 - 85:12	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	86:15 - 87:3	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	87:6 - 87:6	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	87:8 - 87:12	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	87:14 - 87:14	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holdbrooks, Keith	Plaintiff-Designation	89:1 - 89:18	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	89:20 - 89:21	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	89:23 - 89:25	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holdbrooks, Keith	Plaintiff-Designation	90:4 - 90:6	FRE401: Irrelevant. Clayton Supply is a separate corporate entity that has no involvement in the facts at issue in this lawsuit. This will be a running objection on this subject matter to avoid burden to the Court.	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Holzhauer, Steve	Plaintiff - Counter Designation	12:21 - 13:4	FRE 401/402 - Not Relevant; 12:24-13:4	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	14:17 - 14:23	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	17:1 - 17:11	Incomplete/Failure to Designate question	Overruled , but read question at 16:25.
Holzhauer, Steve	Plaintiff - Counter Designation	21:22 - 22:23	FRE 611 Cumulative/Repetitive	Overruled

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Holzhauer, Steve	Plaintiff - Counter Designation	23:3 - 23:12	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	24:5 - 25:16	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	26:7 - 26:19	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	29:16 - 29:24	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	39:24 - 40:20	FRE 401/402 - Not Relevant	Sustained, unless Plaintiff can show this financial testimony is relevant in the jury phase of the trial
Holzhauer, Steve	Plaintiff - Counter Designation	53:15 - 53:24	FRE 611 Cumulative/Repetitive	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	59:12 - 60:4	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	60:19 - 61:3	Incomplete - Designation does not include a question	Overruled if Question (lines 8-9) is added.
Holzhauer, Steve	Plaintiff - Counter Designation	62:14 - 63:3	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	64:12 - 64:15	FRE 401/402 - Not Relevant	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	72:15 - 72:18	Incomplete -- should include 72:20 as well	Add 72:20
Holzhauer, Steve	Plaintiff - Counter Designation	82:3 - 82:11	FRE 611 Cumulative/Repetitive	Overruled
Holzhauer, Steve	Plaintiff - Counter Designation	83:6 - 83:17	FRE 401/402 - Not Relevant; Incomplete - Fails to include question	Overruled if Question is added.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Kennedy, Grant	Plaintiff Counter Designation	112:13 - 112:19	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case	Overruled. Testimony refers to name change but not the reason for the change.
Kennedy, Grant	Defendants-Designation	23:22-24:3	FRE 801. Hearsay	Sustained
Kennedy, Grant	Defendants-Designation	35:15-35:19	FRE 801. Hearsay	Sustained
Kennedy, Grant	Defendants-Designation	138:7-138:10	FRE 801. Hearsay	Sustained
Kennedy, Grant	Defendants-Designation	54:14-55:1	FRE 801. Hearsay	Sustained
Kennedy, Grant	Plaintiff Counter Designation	38:9 - 38:11	FRE401. Improper. Irrelevant. This is a lawyer objection/comment not witness testimony or evidence	Overruled, but 38:12 should be added.
Kennedy, Grant	Plaintiff Counter Designation	72:17 - 73:8	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Sustained, but only as to lines 72:20-24. Otherwise, overruled.
Kennedy, Grant	Plaintiff Counter Designation	76:7 - 76:19	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Overruled. Testimony refers to name change but not the reason for the change.
Kennedy, Grant	Plaintiff Counter Designation	109:24 - 110:3	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Overruled. Testimony refers to name change but not the reason for the change.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Kennedy, Grant	Plaintiff Counter Designation	74:20 - 74:23	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Overruled. Testimony refers to name change but not the reason for the change.
Kennedy, Grant	Plaintiff Counter Designation	75:2 - 75:8	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Overruled. Testimony refers to name change but not the reason for the change.
Kennedy, Grant	Plaintiff Counter Designation	111:9 - 111:15	FRE408. Depending on how the Court rules on the pending Motion in Limine regarding the settlement of the Preliminary Injunction Motion, this topic may be excluded from evidence at the liability stage of the case.	Without reviewing the exhibit, the Court cannot determine if the email at issue discusses the reason for the mark change or simply that the witness was directed to make the change. The testimony will be admitted unless Defendants establish the email discloses the reason for the mark change.
Pederson, Rumia	Plaintiff - Counter Designation	11:21 - 12:1	FRE 401/402 - Not Relevant	Overruled

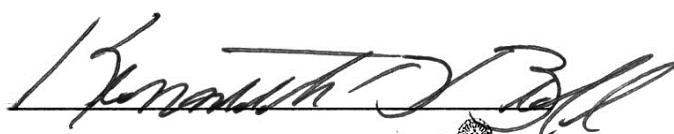
Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Pederson, Rumia	Plaintiff - Counter Designation	27:20 - 27:22	Incomplete without 27:23-28:3	Either add the rest of the answer or simply limit the designation to "No" on line 22.
Pederson, Rumia	Plaintiff - Counter Designation	37:12 - 38:4	FRE 401/402 - Not Relevant	Overruled
Pederson, Rumia	Plaintiff - Counter Designation	38:7 - 39:21	FRE 611 Cumulative/Repetitive; 38:7-38:22. Cf. pp. 18-19	Overruled
Pederson, Rumia	Plaintiff - Counter Designation	41:6 - 41:23	FRE 611 Cumulative/Repetitive; See designations at pp. 11, 24	Overruled
Pederson, Rumia	Plaintiff - Counter Designation	44:2 - 44:25	FRE802. Hearsay; Speculative	Overruled
Pederson, Rumia	Plaintiff - Counter Designation	46:3 - 46:15	Speculative Lack of Authentication	Sustained
Pederson, Rumia	Plaintiff - Counter Designation	47:1 - 48:6	Calls for Speculation (through 48:2)	Sustained
Ponce, Linda	Plaintiff-Designation	4:23 – 5:18	FRE 401, irrelevant at the liability phase of trial	Overruled
Pponce, Linda	Plaintiff-Designation	8:5-8:7	FRE 401, irrelevant at the liability phase of trial	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Ponce, Linda	Plaintiff-Designation	8:20-8:24	FRE 401, irrelevant at the liability phase of trial	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Ponce, Linda	Plaintiff-Designation	8:25-9:3	FRE 401, irrelevant at the liability phase of trial	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.
Ponce, Linda	Plaintiff-Designation	10:7-10:10	FRE 401, irrelevant at the liability phase of trial	Sustained. This ruling is without prejudice to Plaintiff articulating the relevance of the testimony.

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
Travis, Christopher - Vol I	Plaintiff - Counter Designation	12:13 - 12:18	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol I	Plaintiff - Counter Designation	13:17 - 13:21	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol I	Plaintiff - Counter Designation	16:23 - 17:5	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol I	Plaintiff - Counter Designation	22:9 - 23:2	Incomplete - Designation does not include question	Sustained. Start designation at 21:24
Travis, Christopher - Vol I	Plaintiff - Counter Designation	28:16 - 28:25	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol I	Plaintiff - Counter Designation	29:22 - 29:23	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol I	Plaintiff - Counter Designation	50:1 - 51:6	Incomplete without 51:7-15	Sustained. Add the rest of the answer
Travis, Christopher - Vol I	Plaintiff - Counter Designation	62:3 - 62:13	Incomplete -- fails to designate question at 61:24-62:2	Sustained. Add the question.
Travis, Christopher - Vol I	Plaintiff - Counter Designation	73:11 - 73:23	FRE 611 Cumulative/Repetitive; See 74:2-25	Overruled
Travis, Christopher - Vol II	Plaintiff - Counter Designation	99:24 - 100:8	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol II	Plaintiff - Counter Designation	101:3 - 101:6	FRE 401/402 - Not Relevant	Overruled
Travis, Christopher - Vol II	Plaintiff - Counter Designation	112:16 - 113:3	Incomplete without 113:4-10	Sustained. Add 113:4-10.
True, Adam	Plaintiff - Counter Designation	13:23 - 14:3	FRE 401/402 - Not Relevant	Overruled
True, Adam	Plaintiff - Counter Designation	19:17 - 19:23	FRE 401/402 - Not Relevant	Overruled

Witness	Designation	Page and Line Number	Objections	Ruling on Objections
True, Adam	Plaintiff - Counter Designation	24:6 - 24:14	FRE 401/402 - Not Relevant	Overruled
True, Adam	Plaintiff - Counter Designation	28:11 - 28:21	FRE 401/402 - Not Relevant	Overruled
True, Adam	Plaintiff - Counter Designation	42:8 - 42:17	FRE 611 Cumulative/Repetitive	Overruled
True, Adam	Plaintiff - Counter Designation	42:23 - 43:17	FRE 611 Cumulative/Repetitive; FRE401/402 - Not Relevant	Overruled
True, Adam	Plaintiff - Counter Designation	50:15 - 51:15	FRE 611 Cumulative/Repetitive; FRE401/402-Not Relevant (50:15-22, 51:9-11)	Overruled

SO ORDERED, ADJUDGED AND DECREED

Signed: March 24, 2021



Kenneth D. Bell
United States District Judge

